IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 19 OF 2003

Shri Rajesh Chari
Proprietor M/s. Rajesh
Engineering & Fabrications,
6-3/A, Neogi Mansion
Vasco-da-Gama, Goa. ... Applicant

versus

M/s. Zuari Structural Works,
Through its Partner
Shri Gurudas Pundalic Kamat,
Having their factory at D-2/30
Sancoale Industrial Estate
Zuarinagar, Marmagao, Goa. ... Respondent

Mr. S. F. Dessai, Advocate for the Applicant.

Mr. S. S. Kakodkar, Advocate for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 1ST OCTOBER, 2004.

ORAL ORDER

The Applicant herein is an accused who has been convicted in Criminal Case No.14/N/2000/D under Section 138 of the Negotiable Instruments Act, 1981(Act, for short) and sentenced to undergo 15 days Simple Imprisonment and to pay compensation of Rs.45,000/- and which conviction and sentence has been upheld by

the learned Assistant Sessions Judge, Margao, in Criminal Appeal No.30 of 2001 by his Judgment/Order dated 14th February, 2003.

2. The Applicant/Accused in the present Revision Application has prayed for setting aside of the said Judgments/Orders of both the Courts below.

3. The case of the Complainant in the said complaint filed before the learned Judicial Magistrate, First Class, Vasco-da-Gama, was that the Complainant was a partner of the firm known as M/s. Zuari Structural Works, Engineers and Contractors and that the accused on or about 1st December, 1999, had issued to the said Complainant a cheque for Rs.45,000/- drawn on Bank of Goa, Vasco-da-Gama, towards the payment of the execution of works of fabrication, rolling etc. supplied to the accused but when the said Complainant deposited the said cheque in Centurion Bank, Vasco-da-Gama, it was returned with endorsement “funds insufficient” on or about 6th December, 1999 and, therefore, the Complainant by advocate's notice dated 22nd December, 1999, called upon the accused to make payment of the said amount which notice, was returned with postal endorsement “unclaimed” and, therefore, the Complainant filed the complaint under Section 138 of the said Act on or about 28th January, 2000.

4. The Complainant examined himself and produced the said

cheque, delivery vouchers etc. The Complainant also examined two witnesses in support of his case and the accused in the course of cross-examination took manifold defences which are evident from the trend of cross-examination but ultimately did not venture to prove any of them and as a result of which, the accused came to be convicted and sentenced, as aforesaid.

5. This Revision Application was admitted by this Court with a specific Order dated 12th June, 2003, stating that if a sum of Rs.45,000/- is deposited on or before 26th June, 2003, the Revision would be placed on Board or else, it will be placed for directions under the caption “Dismissal”.

6. The Revision Application came up for hearing from time to time before this Court as a result of which another Order was passed on 19th August, 2004. At this time, it was pointed out on behalf of the Complainant that the accused had not deposited the said sum of Rs.45,000/- as stipulated by this Court by Order dated 12th June, 2003. This Court found that the accused had not deposited the said sum of Rs.45,000/- before this Court as was required of him and consequently, an opportunity was given to the accused to deposit the said sum of Rs.45,000/- before this Court within a further period of 10 days. The Fixed Deposit Receipt earlier obtained by the accused in the name of the Registrar of this Court was ordered to be returned and it was further stipulated that only in case, the said deposit was

made before this Court that Criminal Revision Application would be taken up for hearing. Again, it is pointed out by Mr. S. S. Kakodkar, learned Counsel of the Complainant that the Order of this Court dated 19th August, 2004, has also not been complied with by the accused. It is now again seen that the accused has not deposited the sum of Rs.45,000/- as ordered earlier on two occasions, before this Court and has created a Fixed Deposit Receipt in the name of the Registrar, without the consent of the said Registrar.

7. Mr. S. F. Dessai, learned Counsel of the accused has submitted that in case, the said Fixed Deposit Receipt is not in accordance with the Orders of this Court then another opportunity be given to the accused to get the same Fixed Deposit Receipt encashed so that the amount due can be deposited before this Court.

8. I do not think that the party is required to be given opportunities ad infinitum. As already seen, the accused has failed to comply in letter and spirit the Order of this Court dated 12th June, 2003 as well as the Order dated 19th August, 2004 and being so, and on this count alone, the Revision Application deserves to be dismissed.

9. Nevertheless, I am inclined to consider the submissions made on behalf of the accused. The first submission of Mr. S. F. Dessai, learned Counsel of the accused is that the accused was

prevented from leading defence evidence in support of the pleas taken by the accused in the course of the cross-examination. It is his submission that the learned Judicial Magistrate, First Class, ought to have informed the accused that the accused was entitled to lead defence evidence under Section 315 of the Code of Criminal Procedure, 1973(Code, for short).

10. The records show that the statement of the accused under Section 313 of the Code was recorded on 18th June, 2001 and at that time, when the accused was asked by the learned Judicial Magistrate, First Class whether the accused had any witnesses in his defence, the accused answered in the negative. It is not disputed that during the course of the trial he was being represented by an Advocate and not only that the case was thereafter fixed for arguments on 28th June, 2001 and the case was then adjourned at the request of the accused at least on two occasions and it is also seen that an opportunity was also given to the parties to file written submissions. Thereafter, the case was adjourned for Judgment from time to time which was ultimately pronounced on 9th August, 2001. The learned Judicial Magistrate, First Class has noted that the accused even failed to file written submissions.

11. In my view, when the accused was being represented by an Advocate, the learned Judicial Magistrate, First Class, owed no duty to inform the accused that he was competent to be his own

witness and depose in the case as provided under Section 315 of the Code.

12. I, therefore, find no merit in the said submission made on behalf of the accused by Mr. S.F. Dessai, learned Counsel. I am of the view that the accused had sufficient opportunities in case he wanted to rebut the case of the Complainant which the accused could have availed of and, therefore, the accused cannot blame anyone except himself for the same. There is absolutely no case for a remand to enable the accused to lead defence evidence, as urged on behalf of the accused.

13. The accused amongst the several pleas he took in the cross-examination also took a plea that the said cheque was given to the Complainant by way of security but without any further explanation. The learned first appellate Court rightly observed that the cheque shows the name of the Complainant as well as other particulars and it was signed by the accused which was not disputed at all. In fact, the accused in his statement recorded under Section 313 of the Code had admitted having taken from the Complainant some materials stating that he would pay later for the same and had also admitted about the delivery chalans but had maintained that he had paid an amount of Rs.20,000/- to a person sitting in the cabin of the Complainant. The accused had also admitted that an amount of Rs.22,000/- and odd was due by the accused to the Complainant.

Now, the accused has come with a novel plea that the Complainant had received Rs.20,000/- from M/s. Simplex Concrete Pipes India Limited. The accused has also shown his willingness to pay the balance amount of Rs.22,000/- or Rs.25,000/- as his liability. The learned first appellate Court had rightly observed that by virtue of the issuance of the said cheque by the accused in favour of the Complainant a presumption had arisen in favour of the Complainant that a cheque was issued towards the liability of the accused to the Complainant which though rebuttable was not rebutted by the accused and which was sufficient to prove that the Complainant had established that the cheque was issued towards the payment of liability by the accused.

14. Indeed, in the case of **K. Bhaskaran** v. **Sankaran Vaidhyan Balan and another**((1999) 7 SCC 510, the Apex Court has held that the presumption envisaged under Section 118 of the Negotiable Instruments Act, 1881 can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. The Apex Court has further held that Section 139 of the said Act enjoins on the Court to presume that the holder of the cheque received it for the discharge of any debt or liability and that the burden was on the accused to rebut the aforesaid presumption. In my view, the presumption available to the Complainant could not be rebutted by the accused, though it is rebuttable presumption, by merely putting suggestions in cross-examination.

15. In the above view of the matter also the Revision fails and is hereby dismissed.

16. The amount deposited by the accused in the name of the Registrar with accrued interest, be paid to the Complainant by way of compensation as ordered by the learned trial Court.

N. A. BRITTO, J.

RD.